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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,750	10/16/2003	Glenn W. Melzer	CHA920030029US1	8709

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HOFFMAN WARNICK & D'ALESSANDRO, LLC  
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ALBANY, NY 12207

EXAMINER
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NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
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3628

MAIL DATE	DELIVERY MODE
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10/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/686,750

Applicant(s)

MELZER, GLENN W.

Examiner

Freda A. Nelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-19, 22-30 and 33-35 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 20, 21, 31 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The amendment received on August 1, 2007 is acknowledged and entered. Claims 1, 14, and 27 have been amended. No claims have been added. Claims 1-35 are currently pending.

#### ***Response to Amendment and Arguments***

Applicant's arguments filed August 1, 2007 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's arguments that in regards to claims 1, 14, and 27, Habiby et al. fails to teach each and every feature of the claimed invention, for instance, *"a system for inputting a special pricing request from a reseller to a wholesaler, wherein the special pricing request includes a product identifier and an end-user discount the reseller intends on applying to the transaction with the end-user"*, the examiner respectfully disagrees. Nowers et al. discloses the etail pricing fields 102b to 102d include the lowest permitted selling price for the product (minimum) established by the vendor, the percentage of the sale that an Internet retailer receives for selling the product at the lowest permitted selling price (% etail), and the percentage commission

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of the amount over the lowest permitted selling price that the Internet retailer receives when products are sold above the lowest permitted selling price (% above). Nowers et al. further discloses the retail pricing field 102e indicates the wholesale cost of the product paid to the vendor by the Internet retailer if the Internet retailer sells the product. The tax calculation field 102f indicates the tax code used to calculate the amount of sales tax to be charged when the product is sold (paragraph [0115]).

In response to applicant's arguments that nowhere does Habiby disclose a three party transaction, the examiner respectfully disagrees. Habiby et al, in view of Nowers et al. teaches a system operated by a third party to facilitate interaction between on-line Internet retailers/web merchants (collectively referred to as "Internet retailers" herein) and vendors and allow branded vendors to setup, monitor and manage principal/agent relationships with multiple Internet retailers.

#### ***Examiner's Note***

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

**1. Claims 1-4, 11-12, 14-17, 24-25, 27-28, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habiby et al. (US PG Pub. 2003/0033215), in view of Nowers et al. (US PG Pub. 2003/0033205).**

As per claims 1, 14, and 27-28, Habiby et al. discloses a wholesale discount pricing system for calculating a special wholesale pricing between a wholesaler and a reseller for a transaction between the reseller and an end-user, comprising:

a system for inputting a special pricing request from a reseller, wherein the special pricing request includes a product identifier and an end-user discount the reseller intends on applying to the transaction with the end-user (paragraph [0040]);

a product mapping system that maps the product identifier to a set of pricing parameters (paragraph [0101]); and

a calculation system that calculates the special wholesale pricing based on the set of pricing parameters and the inputted end-user discount (paragraphs [0083]-[0084],[0109]).

Habiby et al. does not expressly disclose a special pricing request from a reseller to a wholesaler.

However, Nowers et al. discloses the etail pricing fields 102b to 102d include the lowest permitted selling price for the product (minimum) established by the vendor, the percentage of the sale that an Internet retailer receives for selling the product at the lowest permitted selling price (% etail), and the percentage commission of the amount over the lowest permitted selling price that the Internet retailer receives when products are sold above the lowest permitted selling price (% above). Nowers et al. further discloses the retail pricing field 102e indicates the wholesale cost of the product paid to the vendor by the Internet retailer if the Internet retailer sells the product. The tax calculation field 102f indicates the tax code used to calculate the amount of sales tax to be charged when the product is sold (paragraph [0072],[0115],[0204]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Habiby et al. to include the feature of Nowers et al. in order to provide the user the convenience of communicating pricing information as well as providing a transaction system for vendors and resellers.

As per claims 2 and 15, Habiby et al. discloses the wholesale discount pricing system of claim 1, wherein the end-user discount comprises a percentage of a list price for the transaction (paragraph [0109]).

As per claims 3 and 16, Habiby et al. discloses the wholesale discount pricing system of claim 2, wherein the list price is included in the special pricing request

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(paragraph [0104]).

As per claims 4 and 17, Habiby et al. discloses the wholesale discount pricing system of claim 3, wherein the transaction comprises a sale of a product (paragraph [0111]).

As per claims 11, 24, and 34, Habiby et al. discloses the wholesale discount pricing system of claim 1, further comprising an approval documentation generation system for generating an approval document if the special wholesale pricing is approved by the calculation system (paragraph [0110]-[0112]).

As per claims 12 and 25, Habiby et al. discloses the wholesale discount pricing system of claim 11, wherein the approval document includes:

- a description of the transaction (paragraphs [0081]-[0087]);
- legal terms and conditions (paragraph [0081]-[0087]); and
- details of the special wholesale pricing (paragraphs [0081]-[0087]).

**2. Claims 5-6, 18-19, and 29-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Habiby et al. (US PG Pub. 2003/0033215), in view of Carter, III (US Patent Number 5,878,400).**

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As per claims 5-6, 18-19, and 29-30, Habiby et al. does not expressly disclose wherein the set of pricing parameters includes an entitled discount, a maximum discount, a start margin and an end margin; and

wherein a procedure is used to calculate the special wholesale pricing that includes:

a first routine for handling the case where the end-user discount is less than the start margin;

a second routine for handling the case where the end-user discount is greater than the start margin, but less than the end margin; and

a third routine for handling the case where the end-user discount is greater than the end margin.

However, Carter, III discloses the sample sequence shown in column 718, the Maximum Discount is the first applicable operation; for example, the Maximum Discount can be 50%. In the sample sequence shown in column 718, the Maximum Discount is followed by the Base Cost and since Base Cost is an override operation, the Maximum Discount is automatically overridden by the Base Cost. Thus, if the Base Cost is \$80.00, the number 80.00 overrides the number 0.5 (i.e. 50%). Nevertheless, the number corresponding to the Maximum Discount (i.e. 0.5) is stored for informational purposes and for example, the Maximum Discount may be used to override a total discount that exceeds the Maximum Discount. Alternatively, the Maximum Discount may be used as a flag to prevent sale of a product at a discount that exceeds the Maximum Discount. The numerical value assigned to the Maximum Discount pricing



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type (in this example, 0.5) can be thought of as a denormalized number discussed in relation with FIG. 5. In other words, the significance of this number (in this example, 0.5) is determined during run time. The numerical value assigned to a Maximum Discount pricing type is not used in an addition, subtraction, or multiplication operation. However, the numerical value of the Maximum Discount is used in a comparison operation to ensure that the net result of all discounts applied to a particular product does not exceed a certain limit (i.e. the limit set by the Maximum Discount pricing type) (col. 14, line 59-col. 15, line 23).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Habiby et al. to include the feature of Carter, III in order to provide a sequence of pricing constraints to maximize profits.

**3. Claims 9-10, 22-23, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habiby et al. (US PG Pub. 2003/0033215), in view of Carter, III (US Patent Number 5,878,400), still in further view of Chaves (US PG Pub. 2002/0010643).**

As per claims 9-10, 22-23, and 33, Habiby et al. does not expressly disclose, wherein the special pricing request further includes a special bid code; and a bid code processing system that maps the bid code to a margin adjustment and generates a revised start margin and end margin, and inputs the revised start margin and end margin into the calculation system

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However, Chaves disclose these options (product(s) or service(s)) along with accompanying discount(s) may be individually deleted or retrieved by the shopper as the process unfolds. The net pricing (with discount(s)) for additional items will reflect not just the immediate value (profit) of the item to the dealership, but more importantly where applicable, the added values to be derived from inherent return visits to the dealership (paragraph [0277]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Habiby et al. and Carter, III to include the feature of Chaves to provide the users the ability to bid of wholesale products.

**4. Claims 13, 26, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Habiby et al. (US PG Pub. 2003/0033215), in view of Nowers et al. (US PG Pub. 2003/0033205).**

As per claims 13, 26, and 35, Habiby et al. does not expressly disclose the wholesale discount pricing system, further comprising an audit system for ensuring compliance with the details of the special wholesale pricing.

However, Nowers et al. discloses through the ETS, vendors establish rules of exchange that govern the manner by which their products must be offered for sale by Internet retailers, wherein the ETS allows branded vendors and Internet retailers to reach agreements concerning the manner by which branded goods are to be sold through electronic storefronts; and electronic commercial transactions between Internet

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retailers and their customers are received by the ETS allowing the transactions to be checked for compliance with agreed upon rules of exchange. In this manner, brand integrity can be maintained and channel conflicts between on-line Internet retailers and conventional "bricks and mortar" retailers of brand name goods can be avoided (paragraph [0075]). Nowers et al. further discloses when an Internet retailer 24 becomes an authorized reseller for a vendor, the Internet retailer can buy the vendor's products at a wholesale price and is free to sell the vendor's products at whatever price the Internet retailer decides, so long as the Internet retailer complies with other aspects of the rules of exchange; and when an Internet retailer becomes a sales agent for a vendor, the Internet retailer may sell the vendor's products on behalf of the vendor, so long as the Internet retailer complies with, among other things, the pricing policies that form part of the rules of exchange established by the vendor (paragraph [0096]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Habiby et al. to include the features of Nowers et al. in order to provide compliance and integrity of the system.

***Allowable Subject Matter***

Claims 7-8, 20-21, and 31-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

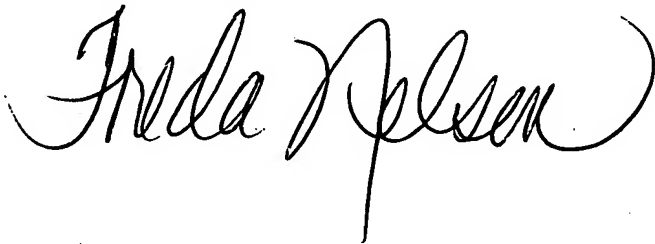
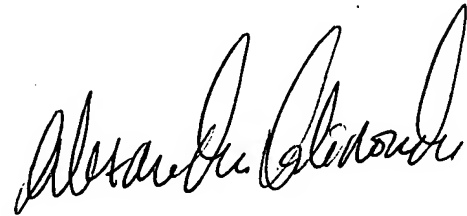
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday, 10 am- 6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 10/15/2007

A handwritten signature in cursive script, appearing to read "Freda Nelsen".A handwritten signature in cursive script, appearing to read "Alexander Kalinowski".

ALEXANDER KALINOWSKI  
SUPERVISORY PATENT EXAMINER